

Friedinger



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mazhar-Ul Haque - Real Estate Expenses - Title Requirements
File: B-234239
Date: June 26, 1989

DIGEST

A transferred employee purchased a residence at his new duty station with his nondependent brother, and the employee claims real estate expense reimbursement based on his 95 percent interest in the property. Since title to the property was in both their names as tenants-in-common and specifically designated their respective financial interests, the employee may be reimbursed 95 percent of the total allowable expenses. Cf. Bernard Mowinski, B-228614, Dec. 30, 1987.

DECISION

This decision is in response to a request from an Authorized Certifying Officer, National Finance Center, Department of Agriculture, concerning the entitlement of an employee to be reimbursed real estate transaction expenses where the employee shared title to the property with his nondependent brother. We conclude that the employee may be reimbursed in the amount that corresponds to his interest in the property.

BACKGROUND

Mr. Mazhar-Ul Haque, an employee of the Food Safety and Inspection Service, was transferred from El Dorado, Arkansas, to Hyattsville, Maryland, in January 1987. When he attempted to purchase a residence in the vicinity of his new official station, he was unable to obtain financing without a co-borrower. His brother, Qazi A. Haque, agreed to co-sign the loan, and this financing was approved by the lender.

The deed of trust executed for the loan described the employee and his brother as joint tenants. However, the recorded deed to the property identified their holding as tenants-in-common and delineated their financial interest as an undivided 95 percent in the employee and an undivided

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5 percent in his brother. The employee sought reimbursement of his real estate expenses based on that interest, but the agency limited his reimbursement to 50 percent of the total amount allowable based on our decision in James A. Woods, B-184478, May 13, 1976. The employee contends that since the deed shows that his brother only has a 5 percent interest, he should be reimbursed for the full 95 percent of the total allowable real estate expenses.

OPINION

The provisions governing reimbursement for real estate expenses incident to a transfer of duty station are contained in 5 U.S.C. § 5724a (1982) and regulations contained in part 6 of chapter 2, Federal Travel Regulations (FTR).^{1/} Paragraph 2-6.1c of the FTR follows the statutory language and requires that:

"[t]he title to the residence . . . at the old or new official station . . . is in the name of the employee alone, or in the joint names of the employee and one or more members of his/her immediate family."

Paragraph 2-1.4d(1) of the FTR defines "immediate family" to include:

"(d) Dependent brothers and sisters . . . of the employee or employee's spouse who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support."

Since there is nothing in the record to suggest that the employee's brother is a dependent of the employee, he will be considered to be not a member of the immediate family for the purposes of this decision.

We have consistently held that where an employee holds title to a residence with an individual who is not a member of his immediate family, the employee may be reimbursed only to the extent of his interest in that residence. Woods, B-184478, *supra*; James C. Bowers, B-195652, Apr. 1, 1980; Anthony Stampone III, B-223018, Sept. 30, 1986.

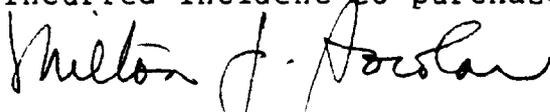
In Bernard Mowinski, B-228614, Dec. 30, 1987, we considered a situation where an employee, who held title to a residence

^{1/} FTR (Supp. 1, Sept. 28, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1987).

with his brother as joint tenants, sought reimbursement based on a two-thirds interest because the recorded deed of title to the property identified him as a married man. After analyzing the nature of joint tenancy, we concluded that since the employee's wife was not named in the deed, the property was owned only by the employee and his brother in individual equal shares. Thus, we limited the employee's reimbursement to 50 percent. Mowinski, supra.

In the present situation, the recorded deed of title, while only in the names of the employee and his brother, identifies their ownership as tenants-in-common and specifies their respective financial interests in the property. This form of ownership is unlike property held in joint tenancy. Title to property held as tenants-in-common can be held upon any agreed to division of ownership interest.^{2/}

Since the employee, Mr. Mazhar-Ul Haque, had a 95 percent interest in the residential property, he may be reimbursed that percentage of the total allowable real estate expenses incurred incident to purchase.

for 
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^{2/} Maryland Real Property Code, § 14-107(a) (1974).
Balderston v. Balderston, 388 A.2d 183 (Ct. Spec. App. Md. 1978).